

The Department's regulations state that "enough of the selling activity must occur within the home rule municipality to justify concluding that the seller is engaged in business within the home rule municipality with respect to that sale." 86 Ill. Adm. Code 270.115(a)(1). (This is a PLR.)

August 27, 2003

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see www.revenue.state.il.us/Laws/regs/part1200/), is in response to your letter of March 25, 2003. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, AAA, we respectfully request a private letter ruling that under the circumstances described below, the rate of retailers' occupation tax for certain retail sales made by our client will be fixed in the City, where the company operates a major distribution center and regional distribution hub and performs a variety of corporate administrative functions.

Material Facts

The company is a full-line supplier of pipe, valves, fittings, plumbing, hydronics, HVAC and pumps, to industrial, commercial, and institutional customers. The company operates branch offices in fifteen cities (ten of which are in Illinois) throughout its market territory. It does not manufacture any of the products it distributes.

The company makes some over-the-counter sales from its branch offices, but most sales involve telephone orders. The phone order process revolves around a state-of-the-art phone system that links all of the company's headquarters and branch offices, and that enables customers to call a single number and have immediate access to the appropriate product specialist, no matter where the customer may call from, and no matter where the job site may be located.

The process usually begins when a customer simply calls in an order. However, in some cases, the process begins when a customer gives a written purchase order to one

of our client's salespeople, who then calls the order in to the office. In other limited cases, the process begins when a customer works directly with the product manufacturer, who faxes our client a request for a purchase order for the particular product, which our client then resells directly to the customer.

Once a call is received at the main office or at a branch office, an inside salesperson fills in a series of fields on a special screen on the company's computer network. The salesperson inputs: the customer name, contact name, purchase order number, job number, job name, item description, mill specifications, quantity requested, price, payment method, delivery method, and freight option. If the customer has an open account with our client, a manager performs a credit review. If the sale is taxable, the salesperson then codes it for sales tax based on the 'ship to' address for the goods. The use of the 'ship to' address means that the sale of the same product to the same customer is often subject to sales tax at three different rates --depending on whether the product is delivered to the job site or the customer's location, or picked up at one of our client's branch offices.

The Department audited our client for the period January 1999 through December 2002 and determined that the use of the 'ship to' address in fixing the sales tax rate was against Department policy. The auditor held that the tax rate was based on the physical location of the salesperson writing the order. But with the sophistication of our client's phone system -- specifically, its ability to route calls placed to a salesperson in one city to a product specialist in another city, this position would result in the same customer being charged different tax rates each time the customer places a phone order, depending on where the phone system transferred the call. Although our client disagrees with this approach, our client nonetheless paid the additional tax associated with the tax rate issue. Naturally, our client wishes to comply with the Department's rules, and wants to avoid revisiting this issue in the future.

Our client is therefore instituting changes to its order fulfillment process that will allow the company to offer all of its customers the same price for the same product, regardless of where in Illinois the product may be shipped or used. Specifically, once the credit manager completes his or her review and conditionally accepts a customer order, the order is routed electronically to a computer at our client's distribution center in the City, where the order is reviewed to verify that it meets the company's pricing and profit standards. If it does, the margin condition is waived and our client accepts the order and releases it for shipment. If it does not, the software alerts the billing manager, who adjusts the price, releases the margin condition, and then accepts the order.

Relevant Authorities

We respectfully request a ruling that, under the circumstances we have described here, the rate of retailers' occupation tax for our client's sales will be fixed in the City. The administrative code provides that:

[I]t is the Department's opinion that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality . . . the seller incurs Home Rule Municipal Retailers' Occupation Tax in that home rule municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.

III. Admin. Code tit. 86, § 270.115(b)(1).

The Department has issued numerous rulings involving this regulation that are directly on point here. In PLR 01-0005 (Feb. 14, 2001), the Department ruled that the tax rate for sales made by a graphic arts equipment dealer was fixed in 'City 2,' where the retailer's customer credit and relations analyst worked. A customer interested in buying the retailer's goods requests pricing information from the retailer's sales office in 'City 1.' The retailer's staff enters purchase orders into a computer system at the office in City 1. After verifying the customer's credit, the retailer releases a conditionally approved order and generates a printed ticket at its warehouse in City 1.

On a scheduled basis, the customer credit analyst in City 2 accesses all conditionally approved orders and logs them as orders meeting the retailer's credit standards. The analyst then contacts the retailer's warehouse in City 1 by phone, fax, or email, and notifies the warehouse staff that the orders printed at the sales office in City 1 have received final approval. Based on these facts, the Department ruled that the local tax rate for the retailer's sales was fixed in City 2 because that is where the retailer accepts purchase orders.

In PLR 01-0008 (Feb. 26, 2001), the Department ruled that the tax rate for a retailer's sales of computer hardware was fixed in 'City,' where the retailer's accounting and credit staff performs a final credit review before order acceptance. In some cases, a customer who wants to buy equipment from the retailer submits a purchase order to a sales representative or a customer service representative at the retailer's sales office in 'City 3' or its headquarters in 'City 2.' In other cases, a customer submits a purchase order by phone, fax, or email and the order is logged into the retailer's computer system.

The order is then sent to the retailer's headquarters in City 2, where special software runs price and credit checks. The software batches orders passing these tests and sends the pending orders electronically to the retailer's sales office in City. The computer in the City office verifies the results of these checks and then does a 'prohibitive customer' review for buyers posing credit risks that may not be disclosed by standard credit reporting services. If an order passes this final test, the order is accepted and sent to the customer service department for fulfillment. If the computer detects an exception, it alerts a credit manager, who contacts the customer to resolve the credit issue. Based on these facts, the Department ruled that the rate of tax for the retailer's sales was fixed in City.

In PLR 01-0018 (May 16, 2001), the Department held that the tax rate for a retailer's sales was based on the rate in 'City 2,' the municipality where the retailer released and approved pending customer orders. A customer may order products by phone or email, or through a sales representative. The purchase order is then logged into the retailer's computerized order entry system at an out-of-state location. If the customer passes an electronic credit check, the order entry system releases a conditionally approved order.

The order is then batched with other conditionally approved orders and sent to a credit analyst in City 2. The analyst reviews the order and, if he or she approves, signs an electronic 'Illinois Authorization Form' and returns the form to the retailer's out-of-state headquarters. Based on these facts, the Department ruled that the sales are taxable in

City 2 because that is where the analyst gave final acceptance to the conditionally approved orders.

In PLR 01-0028 (July 12, 2001), the Department ruled that the tax rate for a retailer's sales of business forms was based on the rate in 'City,' where the retailer's order acceptance administrator performed final credit and pricing checks on customer orders. A customer wishing to make a purchase from the retailer requests pricing information from the retailer's out-of-state headquarters by phone or email, or directly from a customer relations officer. The purchase order is then logged into the retailer's computer system.

The retailer's computer system runs a product availability and 'order feasibility' check. If the order passes the check, it is transferred electronically to the order acceptance administrator in the retailer's City office. The administrator performs a credit check and verifies that the order complies with the retailer's pricing policies. If the order meets these conditions, the administrator accepts the order and releases it for shipment. Based on these facts, the Department ruled that the rate of tax for the retailer's sales was fixed in City.

In PLR 02-0010 (May 21, 2002), the Department held that sales were taxable in the city where the seller's contractor reviewed and approved purchase orders. Orders placed by phone or email are entered into the seller's mainframe computer at an out-of-state location. The computer runs a product availability and customer credit check and sends the orders to the office of the seller's independent contractor in 'City.' The contractor reviews the 'taxability' determination and tax calculation on the orders and verifies that the customer is not on a special credit watch list. If the contractor is satisfied with the results of its review, the orders are accepted. Based on these facts, the Department held that the local rate in City should apply.

In PLR 02-0011 (June 3, 2002), the Department ruled that a merchandiser's sales were taxable in the municipality where the seller converted conditionally accepted orders into finally accepted orders. The seller's direct-ship catalog orders are entered into a mainframe computer by telemarketing specialists. The orders are then sent electronically to an 'order summary system,' which conducts an initial customer and credit check. Orders clearing these checks are conditionally accepted and routed to the seller's order acceptance office in 'City.'

The conditionally accepted orders are further evaluated to see if they meet certain pricing ratios. If they do, the orders are converted from conditionally accepted to finally accepted and the seller is bound by their terms. Based on these facts, the Department ruled that the catalog sales are subject to local sales tax in City because that is the jurisdiction where the seller's employees perform the final check on the purchase order and release the condition on the acceptance.

These authorities are directly on point here. Like the retailers in all of these rulings, our client takes orders at an office in one city and, after performing the initial steps in the order fulfillment process, sends the tentatively approved orders to a location in another city for final review before the orders are unconditionally accepted. Thus, based on these authorities, the tax rate for our client's phone order sales should be fixed in the City because that is where the company unconditionally accepts the orders. We know of no authorities to the contrary.

Regulation Section 1200.100(b) Disclosures

Our client is not under audit from the Department, and is not involved in litigation with the agency. To the best of our knowledge, and to the best of the knowledge of our client, the Department has never ruled on this issue or a similar issue for our client or any of its predecessors, and our client has never submitted and then withdrawn a request for a ruling on this or any other issue. We request that your ruling delete the name and address of our client (and our firm) before the ruling is disseminated.

Finally, we ask that if you are unable to grant the ruling requested, you kindly notify us in advance. Feel free to call with questions or comments.

The Department's regulations state that "enough of the selling activity must occur within the home rule municipality to justify concluding that the seller is engaged in business within the home rule municipality with respect to that sale." 86 Ill. Adm. Code 270.115(a)(1). (emphasis added) The Department has opined that the seller's acceptance of the customer's purchase order is the "most important single factor" in the occupation of selling. However, when order acceptance activity takes place in more than one jurisdiction, the facts and circumstances surrounding the sale must be carefully scrutinized to assure that "enough" of the acceptance activity has occurred in the home room municipality to justify the conclusion that the sale took place there. This inquiry will ordinarily be fact-intensive and require an examination of all of the processes and procedures performed by the seller from the time the customer contacts the seller until the goods are delivered.

Your company's over-the-counter sales are situated at the location of the branch office for ROT purposes. Changing the location of the acceptance of a purchase order does not change the tax situs of an over-the-counter sale. If you have a sales person who makes a sale, the location of the sales person will determine the situs of the transaction. In the situation the other situation you describe where a phone order is routed to the City distribution center and the order is filled from that center, enough of the selling activity takes place at the distribution center in the City to fix the situs of the ROT transaction there.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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